CERCLA & Clean Water Act Coordination Strategies: Sediment Remediation, Stormwater Management and Water Quality Permitting

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Introduction

- EPA has recently issued RODs at several large sediment sites
- Many of us are in the midst of allocating cleanup liability
- At some point allocated and transition to remedial design
- Key issue for sediment cleanups – accommodate federal and local requirements while meeting your design goals
- Lessons learned and strategies on coordination
Agenda

• Where to determine compliance along the investigation and design process
• On-site vs off-site and substantive requirements
• Examples of how to document compliance during the design process
• Key sections and coordination examples for the Clean Water Act

Note: Talk does not cover post remedy compliance with CWA- more to be done (ASTSWMO Sediments Focus Group report-April 2016)
Process

- ARARs in FS or decision docs
- RDWP – start to outline how you intend to comply
- DAR/BOD- Assess data and discuss compliance
- Complex projects may need separate document- SRCAP
- Coordination between EPA/State/Local occurring at each step
Important Concepts

- Applicable vs relevant and appropriate – determine up front
- State-led cleanup typically requires permits
- CERCLA lead cleanup activities that remain onsite are statutorily exempted by CERCLA §121(e) from obtaining permits
- CERCLA actions need to meet substantive requirements and do not need to meet administrative requirements
- Offsite actions need to meet all permit requirements
ARARs

Onsite vs Offsite

• 1990 NCP definition for onsite:
  – “The areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.”
  – “Onsite” includes a receiving water body even if the water body flows offsite. Includes through a POTW.
  – Defining “in very close proximity” is flexible and requires input from all stakeholders as they may view this differently
  – Most common need is to define if a waste staging area is in very close proximity or not to the site
Onsite or Offsite

On or Offsite?

On or Offsite?
Substantive vs Administrative Requirements

• Substantive – Examples of numerical or control requirements
  – Effluent water quality standards
  – Water supply limits for makeup water
  – Design requirements for intake structures (prevent impingement)
  – Land disposal requirements

• Administrative – Examples of procedural, permitting
  – Coordination between EPA and USFWS regarding Migratory Bird Treaty Act or effects on fish and wildlife under Section 10 of the Rivers and Harbors Act
  – Obtaining a CWA 401 certification
  – Coastal Zone Management (CZM) permit
Substantive Lessons Learned

• Some local permits may be easier to obtain and pay for vs back and forth – electrical permit, fire safety permits for an upland processing facility

• Administrative (communication between agencies) still may occur – old habits die hard

• Under equivalency process the EPA is typically the lead in coordination with other agencies/states
  – need process to keep EPA coordinator in the loop with project changes and developments

• Permit application checklists can be a helpful tool
Identify the data you will collect to determine compliance

- Decant water from sediment press
  - Use pilot study to show compliance with water quality requirements
- Rigid work area isolation
  - No flooding downstream
- Exceedance of 10x UTS for UHCs
  - TCLP testing, post pilot study if applicable
- Air emission and compliance
  - Use pilot study to estimate emission from processing system
- “Factual” data to support CWA 404b1 analysis
  - Suspended sediment/turbidity from dredging or capping
Design Analysis Report/Basis of Design - DAR/BOD

• Assess data and discuss compliance in Design Analysis Report/BOD
  – Possibly need individual reports/appendix for each design element
• **Examples**
  – Explain how capture silt during upland construction and capture and/or treatment stormwater during operations
  – Worker safety at removal area or upland processing facility
  – BMPs for air and odor emission control (cover sludge, have workers wear H2S badges, etc.)
  – Need to add stabilizing agent for compliance with free liquids requirement during transport
Substantive Requirements Compliance Plan

- Often use a separate document that describes how all design elements are complying with ARARs and/or substantive requirements

<table>
<thead>
<tr>
<th>Type of Requirement</th>
<th>Requirement Summary</th>
<th>Design Approach</th>
<th>Design Element</th>
<th>How Met (or reference to where discussed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location Specific</td>
<td>Evaluate Probable Impacts</td>
<td>Cap Placement meet substantive requirements</td>
<td>Backfill, Capping</td>
<td>Appendix C</td>
</tr>
</tbody>
</table>
“Other” Requirements

- Underwater sound
  - Outside of migration periods
  - For “informational purposes”
- Superfund JTI
  - Job Training Initiative
- Bird deterrence
  - Barge or processing piles
  - Attractive nuisance
- Odor Monitoring
Clean Water Act – Key Sections

- Section 402 establishes the National Pollutant Discharge Elimination System (NPDES) program
- The substantive NPDES requirements, include:
  - discharge limitations
  - monitoring requirements
  - best management practices
Clean Water Act – Key Sections

- Section 404 prohibits the unauthorized discharge of dredged or fill material into waters of the US, including wetlands.
- Documentation of the effects of the discharge is required as part of a Section 404(b)(1) evaluation. USACE makes 404b1 determination.
Clean Water Act Coordination Examples

• Section 402 of the Clean Water Act:
  – Discharges from the onshore processing of dredged material
    • Identify necessary discharge limits and controls
    • EPA regions to coordinate between Water and Superfund offices
    • Will also need to coordinate with states if they have more stringent discharge standards

• Section 404 of the Clean Water Act:
  – Discharge of fill material including capping or backfill
    • Identify specifications for backfill and testing requirements
    • EPA to coordinate with USACE and wetlands office
    • EPA also coordinate with State if CWA 401 delegated to state
    • EPA and resource agencies to coordinate on impacts to ESA species
Questions?

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